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February 19, 2019

**VIA HAND DELIVERY**

Cathy S. Gatson, Clerk  
Kanawha County Circuit Court  
Kanawha County Judicial Building  
111 Court Street  
Charleston, WV 25301

Re: Sponaugle v. Justice  
Civil Action No. 18-P-442

Dear Ms. Gatson:

Enclosed for filing please find **“Respondent’s Motion to Dismiss”** and **“Memorandum of Law in Support of Respondent’s Motion to Dismiss,”** regarding the above-styled case. By copy of the referenced document, Judge King and all interested parties have been notified of this filing.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



David R. Pogue

DRP/amb  
Enclosure

cc: Honorable Charles E. King, Judge (via hand delivery)  
G. Isaac Sponaugle, Esq.

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.,

G. ISAAC SPONAUGLE, III,  
West Virginia citizen and taxpayer,

Petitioner,

v.

Civil Action Number: 18-P-442  
Honorable Charles E. King, Judge

JAMES CONLEY JUSTICE, II,  
Governor of the State of West Virginia,

Respondent.

**RESPONDENT'S MOTION TO DISMISS**

James Conley Justice, II, Governor of the State of West Virginia (hereinafter "Respondent"), by and through the undersigned counsel, respectfully moves this Court pursuant to Rule 12(b) of the West Virginia Rules of Civil Procedure to dismiss this action against him with prejudice. In support of this motion, Respondent states as follows:

1. Petitioner G. Isaac Sponaugle, III (hereinafter "Petitioner") filed the instant Petition for Writ of Mandamus against Respondent, in his official capacity as Governor of the State of West Virginia, asking this Court to order Respondent to "reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office[.]"

2. Petitioner is not entitled to a writ of mandamus as a matter of law.

3. Mandamus cannot be employed to prescribe the manner in which a government official shall act. The purported duty to "reside" at the seat of government is so nebulous and laden with discretion that any writ granted in this case would necessarily involve prescribing the manner in which the Governor shall act, thereby improperly encroaching on his autonomy.

4. In addition, mandamus is not available to compel a general course of conduct to be performed over a long period of time, as opposed to a discrete act. This is because issuing a writ of mandamus directing a public official to adopt an ongoing course of action would require the issuing court to monitor and supervise the official's conduct on a continuing basis. It would also subject the official to politically-motivated contempt actions, and hamper the official's discretion to act as he deems appropriate in any given set of circumstances. These concerns are magnified where, as here, the official involved is the Governor and the duty sought to be enforced relates to where and how the Governor spends his time. As the Chief Executive of the State of West Virginia, the Governor's duties are both enormous and multifaceted, and he must be afforded the autonomy to determine where and how he will allocate his time on any given day under any given set of circumstances. Thus, not only is it impractical for this Court to monitor the Governor's whereabouts and activities on a ongoing basis, but the Governor's autonomy and discretion cannot be curtailed by an order directing him to spend some arbitrary, pre-determined portion of his time in Charleston throughout his term.

5. Lastly, mandamus is unavailable where other adequate remedies exist. Here, there are other adequate remedies available to Petitioner. If Petitioner is truly dissatisfied with the manner in which Respondent is performing his duties, then he (and any other citizen of this State) has the ability to vote him out of office at the next gubernatorial election. Furthermore, as a member of the Legislature, Petitioner also has the ability to initiate impeachment proceedings if he deems them warranted. However, Petitioner is not entitled to a writ of mandamus controlling the manner in which Respondent apportions his time and presence.


WHEREFORE, Respondent respectfully requests that this Court dismiss the instant Petition for Writ of Mandamus with prejudice, and award Respondent all such other and further relief that

the Court deems just and proper. In further support of this motion, Respondent incorporates the attached Memorandum of Law in Support of Respondent's Motion to Dismiss.

Respectfully submitted,

JAMES CONLEY JUSTICE, II,  
Governor of the State of West Virginia,

By Counsel,



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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.,

G. ISAAC SPONAUGLE, III,  
West Virginia citizen and taxpayer,

Petitioner,

v.

Civil Action Number: 18-P-442  
Honorable Charles E. King, Judge

JAMES CONLEY JUSTICE, II,  
Governor of the State of West Virginia,

Respondent.

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS**

James Conley Justice, II, Governor of the State of West Virginia (hereinafter "Respondent"), by and through the undersigned counsel, respectfully submits this memorandum of law in support of his motion to dismiss.

**I. BACKGROUND**

On June 19, 2018, Petitioner G. Isaac Sponaugle, III filed a Petition for Writ of Mandamus against Respondent James Conley Justice, II, in his official capacity as Governor of the State of West Virginia, asking this Court to order Respondent to reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office. The petition was based on Section I, Article VII of the West Virginia Constitution, which states as follows:

The executive department shall consist of a governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general, who shall be ex officio reporter of the court of appeals. Their terms of office shall be four years and shall commence on the first Monday after the second Wednesday of January next after their election. They shall reside at the seat of government during their terms of office,

keep there the public records, books and papers pertaining to their respective offices and shall perform such duties as may be prescribed by law.

W. Va. Const. art. VII, § 1.

Neither the Constitution, nor the corresponding statutory provision codified at W. Va. Code § 6-5-4, contains any specific guidance as to the meaning of the term “reside” in this context. When this Court questioned Petitioner as to what exactly he wanted the court to order Respondent to do, and what exactly he meant by “reside,” Respondent struggled to answer. *See* Transcript of August 27, 2018 Hearing, attached hereto as Exhibit A, at pp. 15-17. First, Petitioner indicated that he wanted the circuit court to order Respondent to “live” in Charleston, though not necessarily at the Governor’s Mansion. *Id.* When asked how many days of the week or month Respondent needed to “live” in Charleston, Petitioner merely guessed, stating that “I would suspect it would be more than half the year to reside.” *Id.* at 17. When probed further, Petitioner offered to brief the issue. *Id.* at 17-18. The Court ultimately dismissed the petition based on Petitioner’s failure to comply with the pre-suit notice procedures set forth in W. Va. Code § 55-17-3(a)(1).

Following the dismissal of his petition to this Court, Petitioner filed a Petition for Writ of Mandamus before this West Virginia Supreme Court of Appeals, again seeking a writ directing Respondent to “reside” at the seat of government. Despite having been confronted with the issue in this Court, Petitioner did not even attempt to offer a definition of “reside” or explain what exactly he wanted the Supreme Court of Appeals to direct Respondent to do. *See* Petitioner’s WVSCA Petition, attached hereto as Exhibit B. On November 14, 2018, the Supreme Court of Appeals entered an Order stating that “the Court is of the opinion that a rule should not be awarded, and the writ prayed for by the petitioner is hereby refused.” *See* November 14, 2018 Order, attached hereto as Exhibit C.

On December 11, 2018, Petitioner returned to this Court and filed yet another Petition for Writ of Mandamus seeking a writ directing Respondent to "reside" at the seat of government. Once again, Petitioner has not even attempted to articulate (much less cite any authority for) any workable definition of the term "reside," or explain the specifics of what he would like this Court to order Respondent to do. The factual allegations in the Petition provide no clarity. At certain points in his Petition, Petitioner complains that Respondent has allegedly not spent more than a "handful of nights" at the Governor's Mansion. *See* Memo. In Support of Petition at p. 3. At other points, Petitioner complains that Respondent allegedly does not report for work at the Capitol as often as Petitioner would like. *See* Id. at pp. 3, 10-11.<sup>1</sup> It is thus entirely unclear how Petitioner defines "reside," and what threshold of time Petitioner believes Respondent is required to spend at the Governor's Mansion and/or the Governor's Office at the Capitol. The lack of answers to these questions highlights one of the fatal flaws in the instant Petition: the duty to "reside" at the seat of government is simply not the type of clear, specific, discrete, and non-discretionary act that can be controlled through mandamus. As such, and for the reasons set forth below, the Petition fails as a matter of law.

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<sup>1</sup> While Respondent recognizes that the truth or falsity of Petitioner's allegations is generally not determined at the motion to dismiss stage, it should be noted that the only support Petitioner offers for his assertions regarding Respondent's purported "absenteeism" are hearsay statements from online news articles, and in many instances those articles do not support Petitioner's assertions. For example, Petitioner asserts that "Respondent, based on his own public admissions, has not spent more than a handful of nights, if any, at the West Virginia Governor's Mansion[.]" *See* Memo. In Support of Petition at p. 3. However, nowhere in Petitioner's appendix is there any purported statement by Respondent regarding the number of nights that he has spent at the Governor's Mansion. As another example, Petitioner asserts that "[i]t was implied by the Respondent that most of his records, books and papers pertaining to the office of West Virginia Governor are scattered between Greenbrier County and Kanawha County." *See* Memo. In Support of Petition at p. 4. However, there are no statements in Petitioner's appendix regarding the location of the public books, records and papers pertaining to the Office of Governor. Regardless, even if the Petition were properly supported by compelling evidence, and its factual allegations were accurate, the Petition must still be denied for the reasons set forth herein.

## II. STANDARD OF REVIEW

The West Virginia Supreme Court of Appeals has explained that "[t]he purpose of a motion under Rule 12(b)(6) is to test the formal sufficiency of the complaint." Mey v. Pep Boys-Manny, Moe & Jack, 717 S.E.2d 235, 239 (W.Va. 2011). Accordingly, "courts presented with a motion to dismiss for failure to state a claim construe the complaint in the light most favorable to the plaintiff, taking all allegations as true." Sedlock v. Moyle, 668 S.E.2d 176, 179 (W.Va. 2008). Nevertheless, dismissal for failure to state a claim is proper "where it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Mey, 717 S.E.2d at 239.

Furthermore, while the general rule is that material extrinsic to the complaint may not be considered on a Rule 12(b)(6) motion, a court may consider, in addition to the complaint, documents annexed to it, documents incorporated and/or referred to within it, and matters that are susceptible to judicial notice. Forshey v. Jackson, 671 S.E.2d 748, 753-54 (W.Va. 2008); *see also* J.F. Allen Corp. v. Sanitary Bd. of City of Charleston, 785 S.E.2d 627, 630, n.4 (W.Va. 2016). As the Court observed in Forshey, "[g]enerally, the harm to the plaintiff when a court considers material extraneous to a complaint is the lack of notice that the material may be considered," but "where plaintiff has actual notice of all the information in the movant's papers and has relied upon these documents in framing the complaint the necessity of translating a Rule 12(b)(6) motion into one under Rule 56 is largely dissipated." 671 S.E.2d at 753.<sup>2</sup>

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<sup>2</sup> Here, the Court can take judicial notice of the transcript from its prior proceedings, Petitioner's submissions to the West Virginia Supreme Court of Appeals, and the Supreme Court of Appeals' Order refusing to grant the relief requested by Petitioner.



### III. ARGUMENT

Petitioner is not entitled to a writ of mandamus as a matter of law. The West Virginia Supreme Court of Appeals has long held that “[a] writ of mandamus will not issue unless three elements coexist - (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.” Syl. Pt. 2, State ex rel. Kucera v. City of Wheeling, 170 S.E.2d 367 (W. Va. 1969). The burden of proof as to these elements is on the party seeking the relief, and “failure to meet any one of them is fatal.” State ex rel. Richey v. Hill, 603 S.E.2d 177, 182 (W. Va. 2004).

As demonstrated below, Petitioner cannot satisfy the first two elements because the nebulous duty to “reside” at the seat of government is not the type of discrete, nondiscretionary duty that can be compelled through mandamus. In addition, Petitioner cannot satisfy the third element because there are other avenues through which Petitioner (and the citizens of this state in general) can redress any perceived deficiencies in the Governor’s performance.

**A. Mandamus is inappropriate in this case because the requirement that the Governor “reside” at the seat of government is unspecific and necessarily involves elements of discretion that cannot properly be controlled through mandamus.**

It is well-settled that “[m]andamus lies to require the discharge by a public officer of a nondiscretionary duty.” Nobles v. Duncil, 505 S.E.2d 442, 453 (W. Va. 1998). However, our Supreme Court of Appeals has explained that “[a] non-discretionary or ministerial duty in the context of a mandamus action is one that *is so plain in point of law and so clear in matter of fact that no element of discretion is left as to the precise mode of its performance.*” Syl. Pt. 7, Nobles, *supra* (emphasis added). Where a duty involves elements of discretion, mandamus will only lie to compel the exercise of the duty, and not to compel the specifics of the performance. *See Id.* at 453. As the

Supreme Court of Appeals has explained, “[m]andamus is a proper remedy to compel tribunals and officers exercising discretionary and judicial powers *to act*, when they refuse so to do, in violation of their duty, *but it is never employed to prescribe in what manner they shall act*, or to correct errors they have made.” *Id.* at 454(emphasis added); *see also* Ney v. W. Virginia Workers' Comp. Fund, 411 S.E.2d 699, 701 (W. Va. 1991).<sup>3</sup>

The duty to “reside” at the seat of government, as set forth in Section I, Article VII of the West Virginia Constitution and W. Va. Code § 6-5-4, is vague and involves discretion to the point where any writ granted would necessarily (and improperly) involve prescribing the manner in which the Governor shall act. To begin, the West Virginia Supreme Court of Appeals has recognized that the meaning of the word “reside” is anything but plain and clear. In the words of the Court,

[t]he verb “[t]o reside” and its corresponding noun residence are chameleon-like expressions, which take their color of meaning from the context in which they are found. The word ‘residence’ has been described as being ‘like a slippery eel, and the definition which fits one situation will wriggle out of our hands when used in another context or in a different sense.’”

Brooke B. v. Ray, 738 S.E.2d 21, 30 (W. Va. 2013). This raises the question, what does the word “reside” mean in Section I, Article VII of our Constitution? Does it mean “domicile”? Surely not.

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<sup>3</sup> It is true that the Supreme Court of Appeals has held that mandamus lies to control an officer’s discretion where there is a clear showing that the officer’s action is fraudulent, capricious, arbitrary, and/or a palpable abuse of discretion. *See State ex rel. Lambert v. Cortellessi*, 386 S.E.2d 640, 646 (W. Va. 1989). However, even in that situation, a court can only direct the officer to revisit his/her decision, and cannot prescribe the precise manner in which the official is to exercise his/her discretion. *Id.* at 647-48. For example, in Lambert, the Court held that mandamus was available to compel the McDowell County Commission to give due consideration to certain statutorily-mandated factors when setting the budget of a county officer, where the county commission had acted arbitrarily by fixing the budget of the county officer without even consulting with the officer as to the amount of funds necessary for the performance of the statutory duties of his office. *Id.* at 646. However, the Court held that the circuit court erred in ordering that the budgets at issue be restored to the level of the preceding fiscal year, because mandamus does not lie to compel officials to act in a particular manner. *Id.* at 647-48. Instead, the Court observed that the proper relief was to order the commission to reconvene and reconsider the budgets at issue after consulting with the subject officers and taking their workloads and operating needs into account. *Id.*

The West Virginia Supreme Court of Appeals has explained that a “[d]omicile is a place a person intends to retain as a permanent residence and go back to ultimately after moving away.” *Id.* It would be absurd to read Section I, Article VII as requiring anyone who is elected Governor to make Charleston his permanent home where he intends to remain even after his term has expired.

At times, the Supreme Court of Appeals has defined the term “domicile” by stating that it is “a combination of residence (*or presence*) and an intention of remaining.” See State ex rel. Sandy v. Johnson, 571 S.E.2d 333, 339 (W. Va. 2002)(emphasis added); State v. Stalnaker, 412 S.E.2d 231, 233 (W. Va. 1991)(emphasis added). If residence merely means “presence,” then the duty to “reside” at the seat of government necessarily involves elements of discretion.<sup>4</sup> There are no specific legal requirements as to how much time the Governor is to spend in any particular locale, and it is axiomatic that the Governor must be afforded the discretion to travel about the State and govern as he sees fit.<sup>5</sup> Thus, to the extent that the word “reside” merely refers to presence, the duty to “reside”

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<sup>4</sup> “Presence” appears to be the meaning that Petitioner attaches to the word “reside,” even though he does not attempt to define the term. Throughout his Petition and supporting memorandum, he complains about the Governor’s purported failure to report on a daily basis to his office at the Capitol, where he would allegedly be more accessible to state workers and members of the public. Thus, Petitioner’s gripe is not really that the Governor does not “live” or sleep at the seat of government, but that he is allegedly not “present” at the seat of government often enough during working hours. Indeed, if the Governor “lived” or slept just outside the city limits of the seat of government, and commuted from there to his office at the Capitol, it is highly unlikely that Petitioner would be complaining that the Governor was not “residing” at the seat of government.

<sup>5</sup> In truth, the importance of allowing the governor to exercise his discretion to determine where he is “present” on any given day and under any given set of circumstances cannot be overstated. The duties of the Governor, as the Chief Executive of the State, are enormous. Ultimately, he must oversee the operation of the entire executive branch whose duties and responsibilities are myriad and complex. To do so, the Governor must appoint people to literally hundreds of offices. It is his duty to establish policies and goals for the operation of government. He must propose legislation to accomplish those goals. He must prepare, propose and seek passage of a multi-billion dollar budget annually to fund the operation of government. He often confers with the public, and attends important events throughout the State. He further meets with legislative leaders and executive branch officials, meets with a multitude of stakeholders, responds as needed to press and public inquiries and, when he can, spends some time with his family. Quite simply, the tasks to be fulfilled are endless and the demands on his time are substantial. Whether he is meeting with the public, having discussions with staff and others in the confines of his

at the seat of government cannot be enforced through mandamus because any order would necessarily involve prescribing where and how the Governor spends his time. This would plainly violate the precept that mandamus “is never employed to prescribe in what manner [an official] shall act.” See Syl. Pt. 8, Nobles, *supra*; see also State ex rel. Brotherton v. Moore, 230 S.E.2d 638, 642 (W. Va. 1976)(“Where, however, the act required of a governor is ‘political’ in the sense that it necessitates the exercise of executive discretion and judgment, the right of the courts to compel performance is uniformly held to be nonexistent.”).

At other instances, in explaining the difference between “residence” and “domicile,” the Supreme Court of Appeals has stated that a person may have several residences but only one domicile. Brooke B., 738 S.E.2d at 30. Thus, to the extent that the word “reside” simply means to maintain a residence in a particular locale, the Petition fails on its face, because Petitioner does not dispute that Respondent has a residence (the Governor’s Mansion) available to him in Charleston, and Petitioner’s own exhibits indicate that Respondent has furniture and other belongings there. See Petitioner’s Appendix at pp. 13, 19.

In any event, given the uncertainty over the meaning of the word “reside,” it is difficult to imagine how anyone could meritoriously contend that the bald directive to “reside” at the seat of government, without any further elaboration, is sufficiently clear and specific to be enforceable by mandamus without impinging the Governor’s discretion and improperly prescribing the manner in which he shall act. Nevertheless, Petitioner insists that this directive is explicit, plain, and clear.<sup>6</sup>

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office or the mansion, reading material information, or talking on the phone, it must be left to the Governor’s discretion how to allocate his time.

<sup>6</sup> Petitioner cites Slack v. Jacob, 8 W. Va. 612 (1875) in support of his assertion that the West Virginia Supreme Court of Appeals has “interpreted Section 1 of Article VII of the West Virginia Constitution to be [a] nondiscretionary duty of the executive department.” See Memo. In Support of Petition at p. 9. However, the Court did not “interpret” Section I, Article VII in Slack. That case

However, Petitioner's position is belied by the fact that nowhere in his Petition or supporting memorandum does he even attempt to offer a definition of the word "reside." Does it mean that Respondent has to sleep at the Governor's Mansion (or somewhere else in Charleston)? If so, how many nights per week or per month must he sleep there before he is deemed to be "residing" there? Is he "residing" in Charleston if he sleeps there but departs in the morning and spends his waking hours in Wheeling, Martinsburg, Welch, or elsewhere? If so, then how would compelling Respondent to "reside" in Charleston address any of the purported "absenteeism" problems that Petitioner alleges exist due to Respondent's failure to report daily to his office at the Capitol? Petitioner does not even attempt to answer these questions in his Petition and/or supporting memorandum.

As it happens, this Court specifically confronted Petitioner with these very issues, and Petitioner could not provide concrete answers. *See* Exhibit A at pp. 15-21. At first, Petitioner indicated that he wanted the circuit court to order Respondent to "live" in Charleston, though not necessarily at the Governor's Mansion. R. App. at 15-16. When asked how many nights per week or month Respondent needed to "live" in Charleston, Petitioner guesstimated, without citing

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presented the questions of whether an act of the Legislature moving the seat of government from Charleston to Wheeling was constitutional, and whether a circuit court injunction restraining the Governor from moving government property from Charleston to Wheeling was valid. *See Slack*, 8 W. Va. at 615-623. As to the first question, the Court ultimately determined that the act was constitutional. *Id.* at 654. In addressing the second question, the Court noted that upon the passage of the act purporting to move the seat of government, it became the Governor's duty to determine for himself whether the act was valid and where the seat of Government was, because "the constitution of the State unequivocally requires that he shall reside at the seat of government . . . and keep there the public records of his office[.]" *Id.* at 657. The Court ultimately concluded that the injunction was improper because the "the power and duty" at issue in the case were "clearly executive, requiring the exercise of discretion and judgment, on his part." *Id.* at 657-58. The Court at no point addressed the meaning of the term "reside," nor determined that the duty to "reside" could be enforced through mandamus. To the contrary, the fact that the Court dissolved the injunction because it involved duties "requiring the exercise of discretion and judgement" weighs against mandamus in this case, because the nebulous duty to "reside" at the seat of government necessarily requires discretion and judgment.

anything, that "I would suspect it would be more than half the year to reside." Id. at 17. When questioned further about the meaning of "reside" and precisely how much time Petitioner was asking the court to order Respondent to spend in Charleston, Petitioner could not provide an answer, and instead offered to brief the issue. Id. at 17-18. If the duty to "reside" at the seat of government were clear and specific as Petitioner claims, then Petitioner would not need to submit a subsequent brief to explain its meaning.<sup>7</sup>

What *is* clear in this case is that Petitioner's nebulous request for an order directing Respondent to spend more time in Charleston, if granted, would exceed the proper scope of mandamus relief. Again, the West Virginia Supreme Court of Appeals has held that "[m]andamus is a proper remedy to compel tribunals and officers exercising discretionary and judicial powers to act, when they refuse so to do, in violation of their duty, *but it is never employed to prescribe in what manner they shall act*, or to correct errors they have made." Syl. Pt. 8, Nobles, 505 S.E.2d 442 (emphasis added); Ney, 411 S.E.2d at 701. In the absence of specific guidance in the Constitution as to precisely what is meant by "reside" and/or how much time the Governor is required to spend at the seat of government, the writ Petitioner seeks would necessarily involve prescribing the manner in which Respondent is to act, and is therefore improper.

Indeed, a writ prescribing the amount of time the Governor must spend in Charleston, and/or restraining his discretion to determine where he will be present on any given day under any given set of circumstances, would run afoul of the political question doctrine and corresponding separation

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<sup>7</sup> Notably, after this Court challenged Petitioner on the precise meaning of "reside," Petitioner has had ample opportunity to address this issue both in his subsequent Petition to the West Virginia Supreme Court of Appeals, and in the instant Petition and/or supporting memorandum that he filed after returning to this Court. The fact that he made no attempt to do so indicates that Petitioner apparently could not define the precise contours of the duty to "reside" at the seat of government even in a subsequent written submission.



of powers principles. As two acting Justices of the Supreme Court of Appeals recently observed, “[t]he political question doctrine is essentially a function of the separation of powers, . . . existing to restrain courts from inappropriate interference in the business of the other branches of Government, . . . and deriving in large part from prudential concerns about the respect we owe the political departments.” State ex rel. Workman v. Carmichael, 2018 WL 4941057, at \*1 (W. Va. Oct. 11, 2018)(J. Bloom and J. Reger, concurring in part and dissenting in part). Under the political question doctrine, a court should decline to adjudicate an issue where it involves, *inter alia*, “a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court’s undertaking independent resolution without expressing lack of the respect due coordinate branches of government[.]” Id. Here, restraining the governor’s discretion to allocate his time and presence would interfere in the business of the executive branch of government. In addition, there are no judicially manageable standards for dictating the allocation of the Governor’s time and presence; deciding where and how the Governor is to spend his time necessarily requires making a policy determination of a kind clearly meant for nonjudicial discretion; and undertaking to restrain the Governor’s autonomy would express lack of respect due the State’s Chief Executive.

In summary, the Petition utterly fails to define the contours of the directive to “reside” at the seat of government, and ultimately raises issues regarding where and how the Governor performs his job on a daily basis, which necessarily involve the exercise of discretion. Because the duty that Petitioner seeks to enforce is not “so plain in point of law and so clear in matter of fact that no element of discretion is left as to the precise mode of its performance,” and any writ granted would necessarily involve prescribing the manner in which Respondent performs his job, mandamus relief

is not appropriate and the Petition must be denied.

**B. Mandamus is inappropriate to control the performance of continuing duties, as opposed to discrete acts.**

Although the West Virginia Supreme Court of Appeals has not squarely addressed the issue, numerous courts have held that mandamus is not an appropriate remedy to compel a general course of official conduct to be performed over a long period of time. *See e.g. Rocky Mountain Animal Def. v. Colorado Div. of Wildlife*, 100 P.3d 508, 517 (Colo. App. 2004) (“[M]andamus will not lie to enforce duties generally, or to control and regulate a general course of official conduct for a long series of continuous acts to be performed under varying conditions.”); *Stone v. Ward*, 752 So. 2d 100, 101 (Fla. Dist. Ct. App. 2000) (“It is well-settled that mandamus is not appropriate to control or regulate a general course of conduct for an unspecified period of time.”); *Frank H. Hiscock Legal Aid Soc. v. City of Syracuse*, 391 N.Y.S.2d 787, 788 (Sup. Ct. 1977) (“[M]andamus is not available ‘to compel a general course of official conduct or a long series of continuous acts’, performance of which it would be impossible for a court to oversee,” and “is particularly inappropriate where a relevant statutory duty involves the exercise of judgment and discretion.”); *Lakeland Joint Sch. Dist. Auth. v. Sch. Dist. of Scott Twp.*, 200 A.2d 748, 752 (Pa. 1964) (“Mandamus will not lie since mandamus is not available to enforce a general course of official conduct or the performance of continuing duties[.]”); *State ex rel. Patterson v. Bd. of Sup’rs of Warren Cty.*, 125 So. 2d 91, 92 (Miss. 1960) (Mandamus “contemplates the necessity of indicating the precise thing to be done, and so is not an appropriate remedy for the enforcement of duties generally, or to control and regulate a general course of official conduct for a long series of continuous acts to be performed under varying conditions.”); *State ex rel. Bd. of Pub. Ed. for City of Savannah & Chatham Cty. v. Johnson*, 106 S.E.2d 353, 356 (Ga. 1958) (“While mandamus will lie to compel performance of



specific acts, where the duty to discharge them is clear, it is not an appropriate remedy to compel a general course of official conduct for a long series of continuous acts to be performed under varying conditions.”)

This Court should join those listed above, and hold that mandamus is not available where, as here, a petitioner seeks to compel a course of conduct to be performed over a long period of time, as opposed to a discrete act to be performed in a specific instance. As one court explained,

[w]here the court is asked to require the defendant to adopt a course of official action, although it is a course required by statute and imposed on the official by law, it would be necessary for the court to supervise, generally, his official conduct, and to determine in numerous instances whether he has, to the extent of his power, carried out the mandate of the court. It would in effect render the court a supervising and managerial body over the operation and conduct of the activity to which the writ pertains, and so keep the case open for an indefinite time to superintend the continuous performance of the duties by the respondent. Accordingly, the writ will not issue to compel performance of acts of a continuous nature.

Stone, 752 So. 2d at 101–02; *see also* Dorris v. Lloyd, 100 A.2d 924, 927 (Pa. 1953).<sup>8</sup>

This Court previously identified these very problems with respect to the Petition in the case at bar. *See* Exhibit A at pp. 20-21. The Court queried as to how it would know whether Respondent was complying with a hypothetical order directing Respondent to “reside” at the seat of government. *Id.* In response, Respondent seemed to contend that it would be the Court’s job to monitor “security logs” recording Respondent’s attendance at the Governor’s Mansion, and hold Respondent in contempt if he does not show up often enough. *Id.* However, this suggestion is absurd. Not only would Petitioner’s suggestion place this Court in charge of supervising and managing the Governor of the State of West Virginia on an ongoing basis, but it would also open the doors of this Court to politically-motivated contempt proceedings. Indeed, given the nebulous nature of the term “reside,”

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<sup>8</sup> These concerns are magnified where, as here, the official at issue is the Governor and the duty sought to be enforced relates to where and how the Governor spends his time.

Petitioner could harass Respondent with motions to hold him in contempt any time Petitioner subjectively feels (or professes to feel) that the Governor is not spending sufficient time at the Capitol or the Governor's Mansion.

Thus, the mandamus relief sought by Petitioner is not only inappropriate under the law, but also impractical. Plainly, the Governor must have the autonomy and discretion to allocate his time without the constant specter of being hailed into court by his political opponents. As the Chief Executive of this State, the Governor's duties are both enormous and multifaceted, and he must remain free to determine where and how he will allocate his time on any given day under any given set of circumstances. Accordingly, it would be manifestly inappropriate for a court to order the State's Chief Executive to spend some arbitrary, pre-determined portion of his time in Charleston throughout his term.

**C. Other remedies exist to address Petitioner's alleged concerns, while the remedy he seeks would not address his concerns.**

Petitioner alleges that he is concerned about Respondent's "habitual absenteeism," which Petitioner claims has caused "poor productivity of state government," "declining morale among many state workers," and "recent scandals that appear in the daily newspapers." *See* Memo. In Support of Petition at p. 10.<sup>9</sup> Petitioner further alleges that he is concerned about "the inability of citizens and taxpayers of West Virginia having access to the Governor," citing the right of public assembly set forth in Section 16, Article III of the West Virginia Constitution. *Id.* at pp. 10-11.<sup>10</sup>

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<sup>9</sup> Petitioner cites utterly no data to show that this "poor productivity" and "declining morale" even exist, let alone that they were caused by any action or inaction by the Respondent.

<sup>10</sup> The right of public assembly is not implicated in this case. Petitioner cites no case holding that the right of public assembly requires the Governor to be at a particular location for some threshold amount of time so that people can assemble in his or her direct presence.

Lastly, Petitioner alleges that he is “concerned about who is providing Respondent with his daily reports of state government since he is not present to witness it first hand,” and speculates that Respondent may be getting most of his information from “a controversial advisor with ties to the Oil and Gas Industry.” *Id.* at pp. 11-12.<sup>11</sup>

However, not only does Petitioner have other remedies to address these alleged concerns, but the mandamus remedy he seeks would *not* address these concerns. It is axiomatic that if Petitioner (or any citizen of this State) is dissatisfied with the manner in which Respondent is performing his job, they have the ability to vote him out of office at the next gubernatorial election. In addition, Petitioner, as a member of the Legislature, also has the ability to initiate impeachment proceedings if he deems them warranted.

Conversely, a writ of mandamus ordering Respondent to “reside” at the seat of government would *not* address Petitioner’s alleged concerns. There is no definition of “reside” that renders mandamus a workable solution to the alleged problems about which petitioner complains. If “reside” means that Respondent must “live” or “sleep” in Charleston, then Respondent could spend his nights there but still spend his working hours traveling about the state far from the seat of government. Thus, there would be no guarantee that he would be present at the Capitol in order to prevent the purported injuries that Petitioner claims have resulted from his alleged absence, nor would there be any guarantee that Respondent would be present during every “public assembly” of citizens at the Capitol. If “reside” is read to mean that Respondent must be “present” at the seat of

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<sup>11</sup> Even if this were true (which Respondent denies), it has nothing to do with whether Respondent resides at the seat of government. Certainly Petitioner does not believe that even if Respondent spent all of his time at the seat of government, he would be patrolling the halls of the various government buildings to “witness state government first hand.” Whether working from his office at the Capitol or elsewhere, Respondent would get reports from others, and the identity or number of the people giving him those reports has nothing to do with his physical location.

government, then the requirement is axiomatically unenforceable through mandamus, because the governor must be afforded the discretion to travel about the state and perform his job as he sees fit and as required by any given set of circumstances. There is simply no workable definition of “reside” that would allow this Court to command the Governor of the State of West Virginia to be physically present at the seat of government for some arbitrarily-determined minimum number of hours on a daily basis throughout his term, which is apparently what Petitioner seeks.

Again, mandamus lies to compel a public official to perform a duty when it is “so plain in point of law and so clear in matter of fact that no element of discretion is left as to the precise mode of its performance.” Syl. Pt. 7, Nobles, *supra*. It is not available to control the *manner* in which a public officer shall act (Syl. Pt. 8, Nobles, *supra*), nor to compel a general course of official conduct to be performed over a long period of time. Thus, mandamus is not an available remedy to address purported deficiencies in state government by directing the Governor of the State of West Virginia to “reside” (whatever that means) or spend some pre-determined portion of his time in Charleston throughout his term. If Petitioner truly believes that the Respondent is not adequately performing his responsibilities as Governor of the State of West Virginia, his remedy is at the ballot box.

#### **IV. CONCLUSION**

Based on all of the foregoing, Respondent respectfully requests that this Court dismiss the instant Petition for Writ of Mandamus with prejudice, and award Respondent all such other and further relief that the Court deems just and proper.

Respectfully submitted,

JAMES CONLEY JUSTICE, II,  
Governor of the State of West Virginia,

By Counsel,



---

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.,

G. ISAAC SPONAUGLE, III,  
West Virginia citizen and taxpayer,

Petitioner,

v.

Civil Action Number: 18-P-442  
Honorable Charles E. King, Judge

JAMES CONLEY JUSTICE, II,  
Governor of the State of West Virginia,

Respondent.

**CERTIFICATE OF SERVICE**

I, David R. Pogue, do hereby certify that on the 19<sup>th</sup> day of February, 2019, I have served the foregoing **“Respondent’s Motion to Dismiss”** and **“Memorandum of Law in Support of Respondent’s Motion to Dismiss,”** upon the parties to this action, via Electronic Mail and United States Mail, postage pre-paid, addressed as follows:

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---

David R. Pogue, WVSB No. 10806

1 IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2  
3 G. ISAAC SPONAUGLE, III,

4 PETITIONER,

5 VS.

6 CIVIL ACTION NO:

7 JAMES CONLEY JUSTICE, II,

2018-P-217

8  
9 RESPONDENT.

10  
11 HEARING

12  
13 Transcript of the proceedings had in the hearing  
14 of the above-styled action before the Honorable Charles E.  
15 King, Judge, on Monday, the 27th day of August, 2018.

16  
17 APPEARANCES:

18  
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CHELSEA SIVORI COURT REPORTER

EXHIBIT

A

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Chelsea Sivori, Official Reporter

Thirteenth Judicial Circuit



1 statute regarding the 30-day notice correctly, it's 10:52:2  
2 jurisdictional and I should grant their motion, right? 10:52:2

3 MR. SPONAUGLE: That's correct. 10:52:3

4 THE COURT: Let me ask you, sir, ultimately, what are 10:52:3  
5 you seeking for me to -- mandamus is for me to compel a 10:52:3  
6 public official to perform a nondiscretionary legal duty, 10:52:4  
7 right? 10:52:4

8 MR. SPONAUGLE: Correct. 10:52:4

9 THE COURT: What nondiscretionary legal duty do you 10:52:4  
10 want me to -- 10:52:5

11 MR. SPONAUGLE: I want to you file a writ of mandamus 10:52:5  
12 order that's continuing nature that requires Jim Justice to 10:52:5  
13 reside at the seat of government and keep his papers there. 10:52:5

14 THE COURT: Well, I don't know what kind of papers 10:53:0  
15 you're talking about. 10:53:0

16 MR. SPONAUGLE: Well, that's the term under the 10:53:0  
17 constitution under art -- article -- article 7 -- or 10:53:0  
18 basically what I'm asking you -- all right. Here's his -- 10:53:0  
19 here's his position, Your Honor -- 10:53:1

20 THE COURT: No. No. No. I'm not asking for argument 10:53:1  
21 on the ultimate issue. 10:53:1

22 MR. SPONAUGLE: Right. 10:53:1

23 THE COURT: You want me to compel him to what? Live 10:53:1  
24 here? 10:53:1

1 MR. SPONAUGLE: Yes, to follow the constitution. 10:53:2

2 THE COURT: Live here in Charleston? 10:53:2

3 MR. SPONAUGLE: Correct. 10:53:2

4 THE COURT: Up at the mansion? 10:53:2

5 MR. SPONAUGLE: Correct. Well, it doesn't have to be 10:53:2

6 the mansion. I guess he doesn't have to live at the 10:53:2

7 mansion if he doesn't want too. 10:53:3

8 THE COURT: Yeah. Well, is that every day of the week 10:53:3

9 or the month? 10:53:3

10 MR. SPONAUGLE: Well, again, I don't know because I 10:53:3

11 filed a motion to compel discovery, all right? Because I 10:53:3

12 haven't received anything on admissions, interrogatories or 10:53:4

13 request -- production request. 10:53:4

14 THE COURT: Yeah. What's that got do with anything? 10:53:4

15 MR. SPONAUGLE: Well, it -- he's saying that he's up 10:53:5

16 here sometimes but the majority of the time in Lewisburg. 10:53:5

17 I think -- I think it's going to be shown -- basically long 10:53:5

18 story short he hasn't spent one night at the mansion. If 10:53:5

19 he has, it's been less than five nights. Now, over the 10:54:0

20 course of a year and a half -- a year and eight months this 10:54:0

21 -- and the supreme court has held in the past Slack v. 10:54:0

22 Jacob it's an unequivocal constitutional duty. 10:54:0

23 THE COURT: Yeah. 10:54:0

24 MR SPONAUGLE: And the courts -- the courts in the past 10:54:1

1 have said, well, we're not going to get involved in it 10:54:1  
2 unless it's an unequivocal constitution duty. I mean, 10:54:1  
3 various actions are required -- 10:54:1

4 THE COURT: Well, but get back to my question. 10:54:2

5 MR. SPONAUGLE: Okay. 10:54:2

6 THE COURT: You want me to compel Governor Justice to 10:54:2  
7 live in Charleston? 10:54:2

8 MR. SPONAUGLE: Correct. 10:54:2

9 THE COURT: My question then is how many nights a week 10:54:2  
10 or a month am I supposed to require him to live here? 10:54:3

11 MR. SPONAUGLE: Well, I would suspect it would be more 10:54:3  
12 than half the year to reside. 10:54:4

13 THE COURT: Regardless of what he has to do in the way 10:54:4  
14 of performing his job? 10:54:4

15 MR. SPONAUGLE: It's -- it's -- yes. That's the 10:54:4  
16 constitution. He would have to reside here and keep his 10:54:5  
17 domicile here and basically stay here. He can have 10:54:5  
18 multiple residences, but he -- you -- I can have -- 10:54:5

19 THE COURT: You mean you want him to spend the night 10:54:5  
20 here every night of the month? 10:55:0

21 MR. SPONAUGLE: I want him to follow the constitution. 10:55:0

22 THE COURT: No. No. No. No. You're asking me for an 10:55:0  
23 order, sir, to require the governor to do something -- to 10:55:0  
24 stay here. I want to know just how long -- what the 10:55:1

1 specifics of that order are. 10:55:1

2 MR. SPONAUGLE: Well, again, I can get -- I can brief 10:55:1  
3 that for you as to the exact relief. I can tell you right 10:55:2  
4 now he's not following the constitution. He's not residing 10:55:2  
5 there. I can have conversations as to what the proper -- 10:55:3  
6 how many days of the year should he have to reside there. 10:55:3  
7 It's not -- 10:55:3

8 THE COURT: Let's go a little further. 10:55:3

9 MR. SPONAUGLE: Okay. Go ahead. 10:55:3

10 THE COURT: Let's assume that I find that he's not 10:55:3  
11 living here as much as he should -- or sleeping here, okay? 10:55:4

12 MR. SPONAUGLE: Uh-huh. 10:55:4

13 THE COURT: And that's what you're talking about, 10:55:4  
14 right? 10:55:4

15 MR. SPONAUGLE: Yes. Well, I'm talking -- well, let me 10:55:5  
16 back -- 10:55:5

17 THE COURT: I guess it's okay if he sleeps here and 10:55:5  
18 goes to bed here at 11:00 at night and gets up at 7:00 and 10:55:5  
19 goes to Lewisburg when he gets up. Is that all right? 10:56:0

20 MR. SPONAUGLE: Judge, let me -- let me just -- there's 10:56:0  
21 two parts on this, okay? The constitution and what's 10:56:0  
22 actually going on. My example of having the law clerk 10:56:1  
23 stand up there and do all your work and hear the hearings 10:56:1  
24 and issue orders and everything like that, that's what's 10:56:1

1 going on with the executive, all right? The constitution 10:56:1  
2 requires that he shall reside here and he shall do the 10:56:2  
3 work. He's not doing either. So -- so -- but that wasn't 10:56:2  
4 just put in there just for the heck of it. We didn't -- 10:56:2

5 THE COURT: Isn't that really a political issue? 10:56:3

6 MR. SPONAUGLE: Well, again -- 10:56:3

7 THE COURT: Should the people decide that -- 10:56:3

8 MR. SPONAUGLE: The courts -- 10:56:3

9 THE COURT: -- at the next election? 10:56:3

10 MR. SPONAUGLE: -- set forth in the past. I understand 10:56:4

11 there's some states that do that. Some states it's a 10:56:4

12 political issue. The answer here is to impeach him. 10:56:4

13 That's the -- if he's not following the constitution, we 10:56:4

14 should kick it to the legislature and the legislature -- 10:56:5

15 THE COURT: There you go. Let's have another -- 10:56:5

16 MR. SPONAUGLE: Let's have another impeachment. 10:56:5

17 THE COURT: -- impeachment. We don't have enough of 10:56:5

18 that crap? 10:56:5

19 MR. SPONAUGLE: But my point here is -- well, don't 10:56:5

20 look at me on that. Now -- now, the -- the question is the 10:57:0

21 courts have ruled in the past if it's a discretionary duty, 10:57:0

22 they won't get involved. It has to be a nondiscretionary 10:57:1

23 duty that's mandated by the constitution. There are 10:57:1

24 various cases in the -- particularly in the '70s, a slue of 10:57:1

1       them, Arch Moore refused to do various things. The writ of  
2       mandamus --

3       THE COURT: Yeah. Arch was always fussing with the  
4       legislation and everybody else.

5       MR. SPONAUGLE: Correct. And --

6       THE COURT: And he beat them every time.

7       MR. SPONAUGLE: Well, it established -- it established  
8       a case law in the '70s that said when it raises to that  
9       level, the supreme court has to -- the supreme court's not  
10      going to be a wallflower and set on the side and check  
11      itself out. They do weigh in and do have checks and  
12      balance and when they -- they make sure you follow the  
13      constitution if it's a nondiscretionary mandatory duty.  
14      And this has unequivocally been defined as that.

15      THE COURT: Well, okay. Let's say I find all that and  
16      enter an order saying you shall reside, like you say the  
17      constitution says, here in the seat of government here.  
18      How do I enforce it?

19      MR. SPONAUGLE: You have the power of contempt of  
20      order. It's in section 12 of that.

21      THE COURT: Well, how am --

22      MR. SPONAUGLE: Huh?

23      THE COURT: How am I going to know whether he is  
24      staying here or not?

1 MR. SPONAUGLE: Yeah, you will, because there's record 10:58:1  
2 over there kept by the -- you have a whole staff over there 10:58:1  
3 at the mansion. They keep security logs and everything 10:58:2  
4 else. You don't have to put a bracelet on him. 10:58:2

5 THE COURT: Well, I'm not going to check on all that 10:58:2  
6 stuff up there. That's not my job. 10:58:2

7 MR. SPONAUGLE: Well, it's not your job, but it's your 10:58:3  
8 job to make sure the people follow the constitution when 10:58:3  
9 the question's put in there. 10:58:3

10 THE COURT: You want me to follow him around for the 10:58:3  
11 rest of his time -- 10:58:3

12 MR. SPONAUGLE: You don't have to follow him around. 10:58:3  
13 It would be an issue to compel. I'm not suggesting that 10:58:3  
14 you put a bracelet on him and run him around all over the 10:58:4  
15 place and track him. What I would ask that you do is set 10:58:4  
16 forth an order that he shall follow the constitution while 10:58:4  
17 he holds that office and he shall reside in the seat of 10:58:5  
18 government as set forth by the constitution. He's -- 10:58:5  
19 apparently, he's publicly said that he doesn't do that. 10:58:5  
20 The constitution is an inconvenience to him, he doesn't 10:58:5  
21 have to worry about it. 10:59:0

22 THE COURT: I don't know. You know the constitution 10:59:0  
23 was written a long time ago? That provision, right? 10:59:0

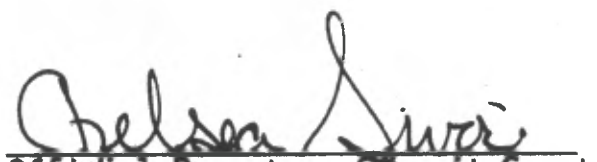
24 MR. SPONAUGLE: Well, I'm -- I'm a delegate and I have 10:59:1

1 STATE OF WEST VIRGINIA,  
2 COUNTY OF KANAWHA, to wit:  
3

4 I, Chelsea Sivori, Official Reporter of the  
5 Circuit Court of Kanawha County, West Virginia, do hereby  
6 certify that the foregoing is a true and correct transcript  
7 of the proceedings had in G. ISAAC SPONAUGLE, III, VS.  
8 JAMES CONLEY JUSTICE, III, Civil Action No. 2018-P-217, on  
9 Monday, the 27th day of August, 2018, as reported by me in  
10 machine shorthand.

11 I hereby certify that the transcript within meets  
12 the requirements of the Code of the State of West Virginia,  
13 Section 51-7-4, and all rules pertaining thereto as  
14 promulgated by the Supreme Court of Appeals.

15 Given under my hand this 10th day of September,  
16 2018.  
17  
18

19  
20   
21 Official Reporter, Circuit Court  
22 of Kanawha County, West Virginia  
23  
24



**IN THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

No. \_\_\_\_\_

STATE OF WEST VIRGINIA, ex rel.,

**G. ISAAC SPONAUGLE, III,**  
West Virginia citizen and taxpayer,  
Petitioner,

v.

**JAMES CONLEY JUSTICE, II,**  
Governor of the State of West Virginia,  
Respondent.

**PETITION FOR WRIT OF MANDAMUS**

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EXHIBIT

tabbles

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### Cases:

<i>Delardas v. County Court</i> , 155 W.Va. 776, 186 S.E.2d 847 (1972) .....	7
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<i>State ex rel. Blankenship v. Richardson</i> , 196 W.Va. 726, 474 S.E.2d 906 (1996) .....	6
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<i>State ex rel. Brotherton v. Blankenship</i> , W.Va., 214 S.E.2d 467 (1975) .....	7

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 <b>Other Authorities:</b>	
Bastress, Robert M. Jr., <u>The West Virginia State Constitution</u> (Oxford Commentaries on the State Constitutions of the United States) (pp. 219 of 381). Oxford University Press. Kindle Edition. ....	1

## QUESTION PRESENTED

This petition presents the question whether Section 1 of Article VII of the West Virginia Constitution and W.Va. Code § 6-5-4 are mandatory nondiscretionary requirements that the officeholder of Governor shall reside at the seat of government during the terms of office, and keep there the public records, books and papers pertaining to that office.

## STATEMENT OF CASE

### HISTORY OF SECTION 1 OF ARTICLE VII OF THE WEST VIRGINIA CONSTITUTION

West Virginia has had two constitutions. The first ratified in 1863 and a second in 1872. The West Virginia Constitution of 1872 was ratified by the voters on August 22, 1872, which is the same constitution that governs the State of West Virginia today subject to certain amendments to it. Section 1 of Article VII of the West Virginia Constitution of 1872 provided the following:

The Executive department shall consist of a Governor, Secretary of State, State Superintendent of Free Schools, Auditor, Treasurer and Attorney General, who shall be *ex officio* reporter of the Court of Appeals. They shall, except the attorney General, reside at the seat of government during their terms of office, and keep there the public records, books and papers, pertaining to their respective offices, and shall perform such duties as may be prescribed by the fifth section of same article declares that "the chief executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed.

"A 1934 amendment added the commissioner of agriculture to the list, and a 1958 amendment deleted the state superintendent of schools. The first of those amendments also changed the inauguration date from March to January, in order to shorten an outgoing administration's lame-duck period, and dropped an exception for the attorney general from the residency requirement." Bastress, Robert M. Jr., The West Virginia State Constitution (Oxford Commentaries on the State Constitutions of the United States) (pp. 219 of 381). Oxford University Press. Kindle Edition.

In 1876, three years after the voters of the State of West Virginia ratified the West Virginia Constitution, the Supreme Court of Appeals of West Virginia distinguished between nondiscretionary duties and discretionary duties in a case that centered around a legal fight over legislation that moved the seat of government from the city of Charleston to the city of Wheeling. The Supreme Court set forth that the state constitution unequivocally requires that the Governor shall reside at the seat of government during his term of office and keep there the public records of his office, was a nondiscretionary duty. 'It was his duty to do so, in fidelity to his oath of office to support the constitution of the State; and the constitution of the State unequivocally requires that he shall reside at the seat of government during his term of office, and keep there the public records of his office, and commands him, as the chief executive officer, in whom is vested the chief executive power, to "take care that the laws be faithfully executed."' *Slack v. Jacob*, 8 W.Va.612, 657 (1875).

The 1875 language of Section 1 of Article VII of the West Virginia Constitution only granted discretion to the Attorney General regarding the place of residency of the officeholder. All other members of the executive department were constitutionally bound by the nondiscretionary (mandatory) requirement that they shall reside at the seat of government. The discretion granted the Attorney General as to his place of residence was amended by the voters in 1934 and it is now a nondiscretionary (mandatory) constitutional requirement that the Attorney General also reside at the seat of government.

#### RESPONDENT WAS ELECTED GOVERNOR & SWORE AN OATH TO OFFICE

On November 8, 2016, Respondent was elected Governor by the citizens of the State of West Virginia. On January 16, 2017, his Inauguration took place at 1:00 p.m. at the West Virginia

State Capitol, the seat of state government. Chief Justice Allen H. Loughry, II, administered the oath or affirmation of Office for Governor to the Respondent, wherein he swore the following:

*"I, James Conley Justice, II, do solemnly swear that I will support the constitution of the United States of America, and the constitution of the State of West Virginia, and that I will faithfully discharge the duties of the office of Governor of the State of West Virginia to the best of my skill and judgment, so help me God."*

RESPONDENT FAILS TO COMPLY WITH  
NONDISCRETIONARY REQUIREMENT OF GOVERNOR

Respondent has not resided at the seat of government during his term of office from January 16, 2017 through the filing of this Petition for Writ of Mandamus. Respondent, based on his own public admissions, has not spent more than a handful of nights, if any, at the West Virginia Governor's Mansion located at 1716 Kanawha Blvd E, Charleston, West Virginia, since January 16, 2017 or at any other residence located within the seat of government, Charleston. In fact, Respondent continues to reside in Greenbrier County, West Virginia. When he decides to go to work, which is not a regular occurrence, at the seat of government he drives himself to and from Greenbrier County. Respondent has made consistent and repeated public remarks that he has not, is not and will not reside at the seat of government.<sup>1</sup>

Members of the West Virginia Legislature have publicly raised concerns about the chronic absenteeism of Respondent and its effect on the productivity of state government that was a major cause of the various scandals by way of a press release.<sup>2</sup>

Respondent has held press conferences publicly declared that he would not move into the Governor's Mansion nor would he be reporting to work daily at the seat of government. Respondent further advised the public that he works from his residence in Greenbrier County,

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<sup>1</sup> App: EX 1;

<sup>2</sup> App: EX 2; EX 4

West Virginia. It was implied by the Respondent that most of his records, books and papers pertaining to the office of West Virginia Governor are scattered between Greenbrier County and Kanawha County. Specifically, Respondent stated in regards where he works, "It doesn't matter whether I do it in the back of a Suburban or from the top of the dome."<sup>3</sup>

Respondent further advised the public at a press conference that he doesn't reside in Charleston, West Virginia, and "I'll only stay at the Mansion when it's convenient to me."<sup>4</sup>

Certain scandals, mismanagement of public monies, no communication with cabinet secretaries and a decrease in productivity of state government has occurred under the Respondent's tenure as Governor.<sup>5</sup>

Respondent has and continues at the time of the filing of this Petition, to violate his oath of office and the nondiscretionary (mandatory) requirement that he shall reside and keep his records, books and papers pertaining to the office of West Virginia Governor at the seat of government pursuant to Section 1 of Article VII of the West Virginia Constitution and W.Va. Code § 6-5-4. Respondent's refusal to perform his nondiscretionary (mandatory) duties violates his oath of office that he will support the constitution of the State of West Virginia and will faithfully discharge the duties of the office of Governor of the State of West Virginia.

As a result, Petitioner, as a West Virginia citizen and taxpayer, has been and continues to be injured by Respondent's poor job performance due to habitual absenteeism. Lacking any other means of compelling Respondent to comply with his duties under the West Virginia Constitution, Petitioner now files this petition for a writ of mandamus to compel Respondent to perform his constitutional nondiscretionary duty that he resides West Virginia

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<sup>3</sup> App: EX 3, EX 5, EX 6

<sup>4</sup> App: EX 14

<sup>5</sup> App: EX 7; EX 8; EX 9; EX 10; EX 11; EX 12, EX 15



at the seat of government and keep all his records, books and papers pertaining to the office of West Virginia Governor there, rather than Greenbrier County.

### **SUMMARY OF ARGUMENT**

Petitioner is a citizen and taxpayer of the State of West Virginia, more particularly Pendleton County. "A citizen and taxpayer of this State has a right to maintain a mandamus proceeding in order to compel a public official to perform a nondiscretionary constitutional duty." Syl. Pt. 1, *State ex rel. Brotherton v. Moore*, 159 W.Va. 934, 230 S.E.2d 638 (1976).

Section 1 of Article VII of the West Virginia Constitution and W.Va. Code § 6-5-4 impose nondiscretionary duties on Respondent to reside at the seat of government during his term of office, keep there the public records, books and papers pertaining to his respective office, and shall perform such duties as may be prescribed by law. Respondent began his four-year term of office on January 16, 2017 and has not complied with this constitutional and statutory nondiscretionary mandatory duties.

For these reasons, this Court should order Respondent to reside at the seat of government during his term of office, AND keep there the public records, books and papers pertaining to his respective office during his term of office.

### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Jurisdiction and venue are proper in the West Virginia Supreme Court of Appeals, which has original jurisdiction over mandamus proceedings pursuant to Section 3 of Article VIII of the West Virginia Constitution.

Petitioner states that any evidence needed to decide this matter would be very limited, if any is required at all, based upon the public statements made by Respondent, as reported by various news agencies, that he does not reside at the seat of government, will not move to the

seat of government and will continue to work from his residence located in Greenbrier County, West Virginia.

Oral argument is necessary pursuant to the criteria in Rule 18(a) of the Rules of Appellant Procedure. Petitioner is requesting a Rule 20 oral argument. This matter is suitable for a Rule 20 argument due to it being a case of first impression; issues of fundamental public importance; and constitutional questions regarding nondiscretionary duties of an elected official.

## **ARGUMENT**

### THE REQUIRED ELEMENTS FOR A WRIT OF MANDAMUS ARE SATISFIED

"Mandamus lies to require the discharge by a public officer of a nondiscretionary duty." Syl. Pt. 3, *State ex rel. Greenbrier County Airport Authority v. Hanna*, 151 W.Va. 479, 153 S.E.2d 284 (1967); Syl. Pt. 1, *State ex rel. West Virginia Housing Development Fund v. Copenhaver*, 153 W.Va. 636, 171 S.E.2d 545 (1969). Syl. Pt. 1, *State ex rel. Williams v. Department of Mil. Aff.*, 212 W.Va. 407, 573 S.E.2d 1 (2002). It is well-established that a writ of mandamus requires three elements:

(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.

Syl. Pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969); accord Syl. Pt. 2, *State ex rel. Blankenship v. Richardson*, 196 W.Va. 726, 474 S.E.2d 906 (1996); Syl. Pt. 1, *Hickman v. Epstein*, 192 W.Va. 42, 450 S.E.2d 406 (1994); Syl. Pt. 1, *State ex rel. McGraw v. West Virginia Ethics Comm'n*, 200 W.Va. 723, 490 S.E.2d 812 (1997).

#### **A. Petitioner possesses a clear legal right to the relief sought**

Petitioner is a citizen and taxpayer of the State of West Virginia, more particularly Pendleton County. "A citizen and taxpayer of this State has a right to maintain a mandamus

proceeding in order to compel a public official to perform a nondiscretionary constitutional duty.” Syl. Pt. 1, *State ex rel. Brotherton v. Moore*, 159 W.Va. 934, 230 S.E.2d 638 (1976); *State ex rel. Brotherton v. Blankenship*, W.Va., 214 S.E.2d 467 (1975); *Delardas v. County Court*, 155 W.Va. 776, 186 S.E.2d 847 (1972). No special or pecuniary interest must be shown by individuals who sue in this capacity. *Frantz v. County Court*, 69 W.Va. 734, 73 S.E. 328 (1911).

The Governor during his term of office is to reside and keep there the public records of his office at the seat of government is a nondiscretionary constitutional duty pursuant to Section 1 of Article VII of the West Virginia Constitution and W.Va. Code § 6-5-4. ‘It was his duty to do so, in fidelity to his oath of office to support the constitution of the State; and the constitution of the State unequivocally requires that he shall reside at the seat of government during his term of office, and keep there the public records of his office, and commands him, as the chief executive officer, in whom is vested the chief executive power, to “take care that the laws be faithfully executed.”’ *Slack v. Jacob*, 8 W.Va.612, 657 (1875).

All the conditions have been satisfied and Petitioner has a clear legal right to the relief sought in this petition.

**B. Respondent, during his term of office, has a nondiscretionary constitutional duty to reside and keep the public records, books and papers pertaining to his public office at the seat of government.**

Section 20 of Article VI of the West Virginia Constitution provides as follows:

**6-20. Seat of government.**

The seat of government shall be at Charleston, until otherwise provided by law.

Section 1 of Article VII of the West Virginia Constitution provides as follows:

**7-1 Executive department.**

The executive department shall consist of a governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general, who shall be ex officio reporter of the court of appeals. Their terms of office shall be four years, and shall commence on the first Monday after the second Wednesday of January next after

their election. They shall reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices, and shall perform such duties as may be prescribed by law.

W.Va. Code § 6-5-4 provides as follows:

**§6-5-4. Residence of officers.**

The Governor, Secretary of State, state superintendent of free schools, Auditor, Treasurer, Attorney General and Commissioner of Agriculture, shall reside at the seat of government during their term of office, and keep there the public records, books and papers pertaining to their respective offices. Every judge of a circuit court shall, during his continuance in office, reside in the circuit for which he was chosen. Every county and district officer, except the prosecuting attorney, shall, during his continuance in office, reside in the county or district for which he was elected. And the removal by any such officer from the state, circuit, county or district for which he was elected or chosen shall vacate his office.

The constitution and statutory language are explicit, in plain ordinary clear English, in setting forth unequivocally that residing at the seat of government during the term of office, and keeping there the public records, books and papers pertaining to that office is a nondiscretionary duty of holding the office of Governor. "Where a provision of a constitution is clear in its terms and of plain interpretation to any ordinary and reasonable mind, it should be applied and not construed." Syl. Pt. 3, *State ex rel. Smith v. Gore*, 150 W. Va. 71, 143 S.E.2d 791 (1965). "Words used in a state constitution, as distinguished from any other written law, should be taken in their general and ordinary sense." Syl. Pt. 6, *State ex rel. Trent v. Sims*, 138 W. Va. 244, 77 S.E.2d 122 (1953). "Questions of constitutional construction are in the main governed by the same general rules applied in statutory construction." Syl. pt. 1, *Winkler v. State School Building Authority*, 189 W.Va. 748, 434 S.E.2d 420 (1993). "The provisions of the Constitution, the organic and fundamental law of the land, stand upon a higher plane than statutes, and they will as a rule be held mandatory in prescribing the exact and exclusive methods of performing the acts permitted or required." Syl. Pt. 2, *Simms v. Sawyers*, 85 W. Va. 245, 101 S.E. 467 (1919).

Section 1 of Article VII of the West Virginia Constitution uses the word "shall" reside at

the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices. The word shall when used in constitutional provisions has been determined to be used in the mandatory sense and not discretionary sense. "As used in constitutional provisions, the word 'shall' is generally used in the imperative or mandatory sense." Syl. Pt. 3, *State ex rel. Trent v. Sims*, 138 W. Va. 244, 77 S.E.2d 122 (1953). "Courts are not concerned with the wisdom or expediencies of constitutional provisions, and the duty of the judiciary is merely to carry out the provisions of the plain language stated in the constitution." Syl. Pt. 3, *State ex rel. Casey v. Pauley*, 158 W. Va. 298, 210 S.E.2d 649 (1975).

The Supreme Court of Appeals of West Virginia has interpreted Section 1 of Article VII of the West Virginia Constitution to be nondiscretionary constitutional duty of the executive department. This has been the rule of law for over 140 years in this state. 'It was his duty to do so, in fidelity to his oath of office to support the constitution of the State; and the constitution of the State unequivocally requires that he shall reside at the seat of government during his term of office, and keep there the public records of his office, and commands him, as the chief executive officer, in whom is vested the chief executive power, to "take care that the laws be faithfully executed."' *Slack v. Jacob*, 8 W.Va.612, 657 (1875).

On November 8, 2016, Respondent was elected Governor by the citizens of the State of West Virginia. On January 16, 2017, his Inauguration took place at 1:00 p.m. at the West Virginia State Capitol, the seat of state government. Chief Justice Allen H. Loughry, II, administered the oath or affirmation of Office for Governor to the Respondent at the Inauguration. Respondent has not resided at the seat of government, will not move to the seat of government and continues to work from his residence located in Greenbrier County, West Virginia. Respondent is violating nondiscretionary duties of holding the office of Governor by

refusing to reside at the seat of government during his term of office and keep there the public records, books and papers pertaining to his respective office, as mandated by Section 1 of Article VII of the West Virginia Constitution and W.Va. Code § 6-5-4.

All the conditions have been satisfied and Respondent is violating a nondiscretionary duty of holding the office of Governor.

**C. Petitioner possesses no other adequate remedy**

Petitioner lacks any adequate alternative remedy, and the writ should issue. The existence of *any* remedy will not suffice. "Mandamus will lie, notwithstanding the existence of another remedy, if such other remedy is inadequate or is not equally beneficial, convenient and effective." *State ex rel. Wheeling Downs Racing Ass'n v. Perry*, 148 W. Va. 68, 73, 132 S.E. 2d 922 (1963). "A remedy cannot be said to be fully adequate to meet the justice and necessities of a case, unless it reaches the end intended, and actually compels a performance of the duty in question." *State ex rel. Bronaugh v. Parkersburg*, 148 W. Va. 568, 573, 136 S.E. 2d 783, 786 (1964).

"Mandamus will lie against a State official to adjust prospectively his or her conduct to bring it into compliance with any statutory or constitutional standard." Syl. Pt. 2, *Gribben v. Kirk*, 466 S.E.2d 147, 195 W.Va. 488 (W. Va., 1995).

Petitioner is concerned about Respondent's habitual absenteeism and its effect on the poor productivity of state government and declining morale among many state workers due to it. Petitioner strongly believes that the recent scandals that appear in the daily newspapers on a regular occurrence are due to Respondent neglect of his constitutional duties and the office of Governor is not in proper order.

Petitioner is further concerned about the inability of citizens and taxpayers of West



Virginia having access to the Governor of the State of West Virginia due to his habitual absenteeism.

Section 16 of Article III of the West Virginia Constitution provides as follows:

**3-16. Right of public assembly held inviolate.**

The right of the people to assemble in a peaceable manner, to consult for the common good, to instruct their representatives, or to apply for redress of grievances, shall be held inviolate.

Citizens have the right to assemble in a peaceable manner, to consult for the common good, to instruct their representative, or to apply for redress of grievances. In short, the right to speak with elected officials while they are performing their elected governmental functions is a constitutional right. To deny this accessibility hurts citizens and taxpayers' confidence in state government. An example would be the teacher and school service personal 9-day work stoppage earlier this year. Thousands of citizens came to the Capitol to assemble in a peaceable manner, to consult for the common good of their class, request change to their elected representatives and applied for relief over numerous grievances with their livelihoods. They wanted to address Respondent who had made several unpopular policy decisions with PEIA and pay increases that triggered the work stoppage. These citizens were disappointed daily due to Respondent not appearing at the seat of government on a regular basis during the work stoppage. No citizen, or legislator for that matter, knew the whereabouts of Respondent during that time. Petitioner believes that Respondent's regular attendance at the seat of government would provide a greater confidence in state government to the public and show empathy rather than the appearance of indifference or "no one cares" image presented by Respondent. If Respondent is not present and does not reside at the seat of government then he is violating every West Virginia citizen and taxpayer's constitutional rights. An individual cannot instruct and apply for a redress of grievances to an empty chair. This is not allowed under the West Virginia Constitution and

every West Virginia citizen and taxpayer's rights are being violated by Respondent.

Petitioner is further concerned about who is providing Respondent with his daily reports of state government since he is not present to witness it first hand and may be only getting reports from one or two individuals that may have a desire to not keep him properly inform for other reasons. One of the individuals is a controversial adviser with ties to the Oil and Gas Industry, among other industries, that Respondent relies on significantly, and possibly exclusively, to provide him with an update on state government.<sup>6</sup> There has been a gag order placed on state government, so all information must go through one or two individuals before it reaches Respondent according to news reports.

Habitual absenteeism and keeping one's public records, books and papers pertaining to the respective office scattered across several counties in a disorganized manner is fret with problems that should be avoid. The West Virginia Constitution and W.Va. Code have safeguards built into it to avoid these basic problems in the form of mandatory attendance of officeholders of the executive department when they hold that office. Respondent has not and refuses to address his habitual absenteeism and chaotic book keeping of his records.

If a writ of mandamus is issued against Respondent to adjust prospectively his conduct to bring it into compliance with the constitutional and statutory standards, then the aforesaid concerns regarding state government will be remedied.

For the aforesaid reasons, Petitioner lacks any other adequate remedy. The writ of mandamus should be issued.

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<sup>6</sup> App: EX 13




## CONCLUSION

Petitioner respectfully requests that the Court grant a rule to show cause, enter an expedited briefing schedule, and after due consideration, grant Petitioner a writ of mandamus. Petitioner believes that the writ should compel Respondent to meet his nondiscretionary mandatory constitutional duty pursuant to Section 1 of Article VII of the West Virginia Constitution and W.Va. Code § 6-5-4 that he reside at the seat of government during his terms of office, and keep there the public records, books and papers pertaining to his respective office; award court costs and grant such other relief as the Court deems equitable.

Given under my hand this 18<sup>th</sup> day of September 2018.

G. Isaac Sponaugle, III  
Petitioner

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\_\_\_\_\_  
G. Isaac Sponaugle III  
State Bar #9720  
Petitioner

STATE OF WEST VIRGINIA

COUNTY OF PENDLETON, to-wit:

G. Isaac Sponaugle, III, Petitioner named in the foregoing *Petition for Writ of Mandamus*, being first duly sworn, say that the facts and allegations set forth therein are true and correct, except insofar as they are therein stated to be upon information and belief, and insofar as therein stated to be upon information and belief, they believe them to be true and correct.

  
G. Isaac Sponaugle, III

Taken, sworn to and subscribed before me, a Notary Public in and for the county and state aforesaid, this the 18<sup>th</sup> day of September 2018.

My commission expires March 1, 2024



  
NOTARY PUBLIC

### CERTIFICATE OF SERVICE

I, G. Isaac Sponaugle III, Petitioner, do certify that a true copy of the foregoing *Petition for Writ of Mandamus* was served upon Respondent and the West Virginia Attorney General, as required by Rule 37 of the Revised Rules of Appellate Procedure, by hand delivering true copies to them on this the 18<sup>th</sup> day of September 2018.

  
Petitioner

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on November 14, 2018, the following order was made and entered:

State of West Virginia ex rel.  
G. Isaac Sponaugle, III  
Petitioner

vs.) No. 18-0810

James Conley Justice, II,  
Governor of the State of West Virginia,  
Respondent

**ORDER**

On September 18, 2018, the petitioner, G. Isaac Sponaugle, III, self-represented, filed a petition praying for a writ of mandamus to be directed against the respondent, as therein set forth. Thereafter, on October 16, 2018, the respondent, Governor James Conley Justice, II, by counsel Michael W. Carey and David R. Pogue, Carey, Scott, Douglas & Kessler, PLLC, filed a response to the petition.

Upon consideration and review, the Court is of the opinion that a rule should not be awarded, and the writ prayed for by the petitioner is hereby refused. Justice Paul T. Farrell sitting by temporary assignment. Justice Armstead disqualified.

A True Copy

Attest: /s/ Edythe Nash Gaiser  
Clerk of Court



EXHIBIT

C